

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DISPLAY TECHNOLOGIES, LLC,

Plaintiff,

v.

HTC AMERICA, INC.,

Defendant.

**Civil Action No. 2:17-cv-00070
JURY TRIAL DEMANDED**

**DISPLAY TECHNOLOGIES, LLC’S RESPONSE TO
DEFENDANT HTC AMERICA, INC.’S MOTION TO DISMISS**

Plaintiff Display Technologies, LLC (“Display”) respectfully responds to Defendant HTC America, Inc.’s (“HTC”) Motion to Dismiss (Dkt. 9) and would show the Court as follows:

HTC suggests that its motion not be ruled upon until the issue of proper venue in patent infringement cases has been resolved by The Supreme Court of the United States. *Mot.* at 5. The motion was made at this time in order to comply with the requirements of Fed. R. Civ. P. 12, and “to preserve [HTC’s] right to obtain dismissal.” *Mot.* at 2.

HTC discusses the Supreme Court’s consideration of *In re TC Heartland LLC* on appeal from the Federal Circuit. *Mot.* at 4. HTC actually presents the Federal Circuit’s justification for its ruling, and then simply states that it does not believe that the Federal Circuit’s analysis was correct. *Id.* Such an argument, that the acknowledged currently controlling authority is simply wrong, is not a basis for obtaining relief at the trial court level.

Display disagrees with HTC’s opinion that the Federal Circuit’s analysis is incorrect. Display also respectfully suggests that it is not the place of either party to this lawsuit to offer an analysis of the state of the law on the issue of venue since the U.S. Supreme Court has taken up the issue and is expected to issue controlling authority that will render this motion moot since it cannot

be based on authority that does not exist at this time.

Display requests that the motion be denied under the currently controlling authority. *In re TC Heartland LLC.*, 821 F.3d 1338 (Fed. Cir 2016). Alternatively, Display requests that if the Court does not deny the motion that it defer ruling on it until such time as the U.S. Supreme Court issues its opinion that resolves the venue issue and the briefing on this motion can be supplemented based on that outcome.

Dated: April 24, 2017

Respectfully submitted,

/s/ Thomas C. Wright

Thomas C. Wright

Texas State Bar No. 24028146

Alex J. Whitman

Texas State Bar No. 24081210

Cunningham Swaim, LLP

7557 Rambler Road, Suite 400

Dallas, TX 75231

Telephone: (214) 646-1495

Fax: (214) 613-1163

twright@cunninghamswaim.com

awhitman@cunninghamswaim.com

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being notified of the filing of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 24th day of April, 2017.

/s/ Thomas C. Wright

Thomas C. Wright